



North Carolina Department of Environment and Natural Resources
Division of Water Quality

Beverly Eaves Perdue
Governor

Coleen H. Sullins
Director

Dee Freeman
Secretary

September 8, 2011
Dare County
DWQ Project No. 20110820 v.2
NC 12 Emergency Repair

MODIFICATION of APPROVAL of 401 WATER QUALITY CERTIFICATION with ADDITIONAL CONDITIONS

Dr. Gregory Thorpe, Ph.D., Environmental Management Director
Project Development and Environmental Analysis Branch
N. C. Department of Transportation
1598 Mail Service Center
Raleigh, North Carolina, 27699-1548

Dear Dr. Thorpe:

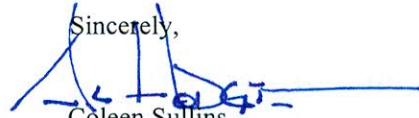
You have our approval, in accordance with the conditions listed below, for the following impacts for the purpose of the emergency repair of NC 12 in Dare County. This modification approves the dredging of approximately **26,500 cubic yards** of sand from the intertidal zone as necessary to fill sand bags for road fill slope protection at the Pea Island and Rodanthe sites and also for dune reconstruction at the Rodanthe site.

The project shall be constructed in accordance with your application and revised aerial source map for Rodanthe received via e-mail September 8, 2011. All the authorized activities and conditions associated with the original Water Quality Certification dated September 2, 2011 and all subsequent modifications still apply except where superceded by this certification. After reviewing your application, we have decided that these impacts are covered by General Water Quality Certification Number 3703. This certification corresponds to the General Permit 192000048 issued by the Corps of Engineers. In addition, you should acquire any other federal, state or local permits before you proceed with your project including (but not limited to) Sediment and Erosion Control, Non-Discharge and Water Supply Watershed regulations. This approval will expire with the accompanying 404 permit.

This approval is valid solely for the purpose and design described in your application (unless modified below). Should your project change, you must notify the DWQ and submit a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter, and is thereby responsible for complying with all the conditions. If total wetland fills for this project (now or in the future) exceed one acre, or of total impacts to streams (now or in the future) exceed 150 linear feet, compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to remain valid, you must adhere to the conditions listed in the attached certification.

1. This modification is applicable only to the additional proposed activities. All of the authorized activities and conditions associated with the original Water Quality Certification dated September 2, 2011 and subsequent modifications still apply except where superceded by this certification.
2. If fill sand for the sand bags needs to be obtained from areas other than those depicted on your Pea Island and revised Rodanthe source maps, notification to and approval from the Division of Water Quality is required.

If you do not accept any of the conditions of this certification, you may ask for an adjudicatory hearing. You must act within 60 days of the date that you receive this letter. To ask for a hearing, send a written petition that conforms to Chapter 150B of the North Carolina General Statutes to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699. This certification and its conditions are final and binding unless you ask for a hearing. This letter completes the review of the Division of Water Quality under Section 401 of the Clean Water Act. If you have any questions, please contact Garcy Ward at (252) 948-3922.

Sincerely,

for Coleen Sullins

Attachments (General Certification)

cc: Clay Willis, DOT Division 1 Environmental Officer
Bill Biddlecome, US Army Corps of Engineers, Washington Field Office
Stephen Lane, DCM, Morehead City
Cathy Brittingham, DCM, Raleigh
Sonia Carrillo, NC DWQ, 401/Wetlands Unit
File Copy

Water Quality Certification N°. 3703

GENERAL CERTIFICATION FOR PROJECTS ELIGIBLE FOR U.S. ARMY CORPS OF ENGINEERS REGIONAL GENERAL PERMIT 198000048 INVOLVING DISPOSAL OF DREDGED MATERIAL ON OCEAN BEACHES WITHIN NORTH CAROLINA

Water Quality Certification Number 3703 is issued in conformity with the requirements of Section 401, Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality Regulations in 15 NCAC 2H, Section .0500 and 15 NCAC 2B .0200 for the discharge of fill material to waters and wetland areas which are waters of the United States as described in the Wilmington District's Regional (General) Permit Number 198000048 . The State of North Carolina certifies that the specified category of activity will not violate applicable portions of Sections 301, 302, 303, 306 and 307 of the Public Laws 92-500 and 95-217 if conducted in accordance with the conditions hereinafter set forth.

Any proposed fill, dredging, excavation or other modification of waters or wetlands under this General Certification requires written approval from the Division of Water Quality.

In accordance with North Carolina General Statute Section 143-215.3D(e), any requirement for written approval for a 401 Water Quality Certification must include the appropriate fee. If a project also requires a CAMA Permit, then one payment to both agencies shall be submitted and will be the higher of the two fees.

Conditions of Certification:

1. No Impacts Beyond those Authorized in the Written Approval

No waste, spoil, solids, or fill of any kind shall occur in wetlands, waters, or riparian areas beyond the footprint of the impacts authorized in the written approval, including incidental impacts. All construction activities, including the design, installation, operation, and maintenance of sediment and erosion control Best Management Practices, shall be performed so that no violations of state water quality standards, statutes, or rules occur.

2. Standard Erosion and Sediment Control Practices

Erosion and sediment control practices must be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices:

- a. Design, installation, operation, and maintenance of the sediment and erosion control measures must be such that they equal, or exceed, the requirements specified in the most recent version of the *North Carolina Sediment and Erosion Control Manual*. The devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) projects, including contractor-owned or leased borrow pits associated with the project.
- b. For borrow pit sites, the erosion and sediment control measures must be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Surface Mining Manual*.
- c. Reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act and the Mining Act of 1971.
- d. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.
- e. If the project occurs in waters or watersheds classified as Primary Nursery Areas (PNA's), Trout (Tr), SA, WS-I, WS-II, High Quality (HQW), or Outstanding Resource (ORW) waters, then the sediment and erosion control requirements contained within *Design Standards in Sensitive Watersheds* (15A NCAC 04B .0124) supercede all other sediment and erosion control requirements.

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3. No Sediment and Erosion Control Measures in Wetlands or Waters

Sediment and erosion control measures should not be placed in wetlands or waters without prior approval from the Division. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, then the design and placement of temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands or stream beds or banks, adjacent to or upstream and down stream of the above structures. All sediment and erosion control devices shall be removed and the natural grade restored within two (2) months of the date that the Division of Land Resources or locally delegated program has released the project.

4. Construction Stormwater Permit NCG010000

Upon the approval of an Erosion and Sedimentation Control Plan issued by the Division of Land Resources (DLR) or a DLR delegated local erosion and sedimentation control program, an NPDES General stormwater permit (NCG010000) administered by the Division is automatically issued to the project. This General Permit allows stormwater to be discharged during land disturbing construction activities as stipulated by conditions in the permit. If your project is covered by this permit [applicable to construction projects that disturb one (1) or more acres], full compliance with permit conditions including the sedimentation control plan, self-monitoring, record keeping and reporting requirements are required. A copy of this permit and monitoring report forms may be found at http://h2o.enr.state.nc.us/su/Forms_Documents.htm.

5. The discharge shall not contain levels of toxic pollutants that would result in a violation of state water quality and wetland standards.

6. If concrete is used during the construction, then a dry work area should be maintained to prevent direct contact prevent direct contact between curing concrete and stream water. Water that inadvertently contacts uncured concrete should not be discharged to surface waters due to the potential for elevated pH and possible aquatic life/fish kills.

7. Construction Moratoriums and Coordination

The timing of the dredging and discharge shall be coordinated with State and Federal agencies and the applicant in order to lessen impact on aquatic organisms and their reproduction. If activities should take place during periods of high biological activity (i.e. sea turtle or bird nesting), biological monitoring may be required at the request of other state or federal agencies and coordinated with these dredging activities.

All moratoriums on construction activities established by the NC Wildlife Resources Commission (WRC), US Fish and Wildlife Service (USFWS), NC Division of Marine Fisheries (DMF), or National Marine Fisheries Service (NMFS) to lessen impacts on trout, anadromous fish, larval/post-larval fishes and crustaceans, or other aquatic species of concern must be obeyed.

8. If an environmental document is required under NEPA or SEPA, then this General Certification is not valid until a Finding of No Significant Impact (FONSI) or Record of Decision (ROD) is issued by the State Clearinghouse.

9. The applicant shall use the Certificate of Completion form attached to the cover letter to notify DWQ when all activities authorized by this General Certification have been completed.

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10. Certificate of Completion

When written authorization is required for use of this certification, upon completion of all permitted impacts included within the approval and any subsequent modifications, the applicant shall be required to return the certificate of completion attached to the approval. One copy of the certificate shall be sent to the DWQ Central Office in Raleigh at 1650 Mail Service Center, Raleigh, NC, 27699-1650.

11. This General Certification shall expire three (3) years from the date of issuance of the written approval or on the same day as the expiration date of the corresponding Regional Permit 198000048. The conditions in effect on the date of issuance of Certification for a specific project shall remain in effect for the life of the project, regardless of the expiration date of this Certification. If the construction process for approved activities will overlap the expiration and renewal date of the corresponding 404 Permit and the Corps allows for continued use of the 404 Permit, then the General Certification shall also remain in effect without requiring re-application and re-approval to use this Certification for the specific impacts already approved.
12. The applicant/permittee and their authorized agents shall conduct all activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act), and any other appropriate requirements of State and Federal Law. If the Division determines that such standards or laws are not being met, including failure to sustain a designated or achieved use, or that State or Federal law is being violated, or that further conditions are necessary to assure compliance, then the Division may reevaluate and modify this General Water Quality Certification.

Non-compliance with or violation of the conditions herein set forth by a specific fill project shall result in revocation of this General Certification for the project and may result in criminal and/or civil penalties.

The Director of the North Carolina Division of Water Quality may require submission of a formal application for Individual Certification for any project in this category of activity if it is determined that the project is likely to have a significant adverse effect upon water quality including state or federally listed endangered or threatened aquatic species or degrade the waters so that existing uses of the wetland or downstream waters are precluded.

Public hearings may be held for specific applications or group of applications prior to a Certification decision if deemed in the public's best interest by the Director of the North Carolina Division of Water Quality.

Effective date: November 1, 2007

DIVISION OF WATER QUALITY

By



Coleen H. Sullins

Director

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History Note: Water Quality Certification Number 3703 replaces Water Quality Certification Number 3372 issued on March 18, 2002, Water Quality Certification Number 3493 issued December 2004 and Water Quality Certification Number 3640 issued March 2007. This General Certification is rescinded when the Regional Permit is re-authorized or when deemed appropriate by the Director of the Division of Water Quality.